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No. 79-1922

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CENTRAL OF GEORGIA RAILROAD COMPANY, *Petitioner,*

v.

JAMES E. HENDLEY, *Respondent.*

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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MEMORANDUM OF PETITIONER IN REPLY TO BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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The Brief of the United States recognizes (p. 13) that disposition of this case requires the Court to reconcile two important federal statutory interests — the mandatory disputes resolution mechanism of the Railway Labor Act, and the employee protection afforded by Section 60 of the Federal Employers' Liability Act. Relying largely on *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, the United States concludes that the court below was correct in deciding that the scheme of the

Railway Labor Act must yield. We submit this brief reply to demonstrate that the decision below cannot be supported on the basis of the *Alexander* decision. Hence, *Alexander* does not detract from the reasons advanced in the petition for granting the writ. Indeed, it further underscores the need for this Court's review.[1]

Alexander was a racial discrimination case under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq*. There the Court subordinated the general federal policy favoring voluntary arbitration to the statutory anti-discrimination policy in holding that an employee's right to a trial *de novo* under Title VII was not foreclosed by prior submission of his claim to arbitration under a collective bargaining agreement. The Court relied on the intent of Congress that the policy against discrimination was of the "highest priority" (415 U.S. at 47) and on other factors related to the purpose and structure of Title VII.

The balance between the two statutes involved in this case is different. The high priority that Congress has given to protection against racial discrimination has no application to Respondent's Section 60 claim. Likewise, none of the other Title VII factors that prompted the Court's decision in *Alexander* is pertinent here.

First, the Court relied on the investment of plenary power in the federal courts to secure Title VII compliance in actions brought by private individuals to whom Congress had given "a significant role in the enforcement process of Title VII" (*id.*, at 45, 47). Here the reverse is true. By the Railway Labor Act, Congress had mandated an exclusive and comprehensive system by

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[1] It is not without significance that the court below did not rely upon — or even refer to — *Alexander*.

which minor disputes arising out of the employment relationship are resolved by the Adjustment Board, not the courts. And Section 60 of the FELA does not even expressly authorize a private cause of action, much less give private individuals a significant role in its enforcement.

Second, in *Alexander*, the Court found the arbitral forum inappropriate for determining Title VII rights (*id.*, at 53, 56-57). Here, however, the Adjustment Board is appropriate for determining Section 60 rights asserted by employees subject to the arbitration requirements of the Railway Labor Act. The legislative history of Section 60 shows that Congress was satisfied with the Adjustment Board's past determinations of the very same rights as protected by Section 60 (Pet., pp. 10-11). The Railway Labor Act itself provides the Board with the necessary jurisdiction (Petitioner's Reply, p. 4). And this Court has confirmed that the Board is competent to decide such "legal issues." *Union Pacific Railroad* v. *Sheehan*, 439 U.S. 89; *Order of Railroad Telegraphers* v. *Railway Express Agency, Inc.*, 321 U.S. 342.[2]

Third, the Court's decision in *Alexander* also was premised on the relatively little interference with the federal policy favoring arbitration that would ensue if employees are able to assert non-discrimination rights in two forums, arbitral and judicial (415 U.S. at 50-51,

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[2] The Brief of the United States offers a superficial and unhelpful analysis in maintaining (p. 9) that "[i]n cases such as this, the controversy requires the interpretation of a federal statute, not the interpretation of a collective bargaining agreement." Indeed, in the very next sentence (pp. 9-10) the United States correctly, but inconsistently, points out that "the Adjustment Board may construe collective bargaining agreements to embody applicable federal law. . .."

54-55). Were this result extended to the present case, however, it would collide head-on with the Railway Labor Act. As this Court has often recognized, the single forum requirement of the Railway Labor Act is central to the purpose and effectiveness of that Act's disputes resolution scheme. (See Pet., pp. 13-14.)

Thus, although, as the United States notes (Br., pp. 5-6), the Court described the Title VII rights asserted in *Alexander* as "independent statutory rights. . . . distinctly separate" from contractual rights (415 U.S. at 49-50), this language has no talismanic value. It does not reconcile the conflict between the Railway Labor Act and FELA Section 60 presented in this case. And it certainly does not mean, as the United States contends (Br., p. 5), that the principles of mandatory and exclusive arbitration under the Railway Labor Act, which this Court has repeatedly stressed, should be abandoned without this Court's review.[3]

Indeed, *Alexander* underscores the need for review of the decision below. There the Court emphasized maintaining the integrity of a statutorily prescribed scheme of remedies. As we have pointed out in the peti-

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[3] The unhelpfulness of relying on the "independent statutory rights" language of *Alexander* v. *Gardner-Denver Co.* to reconcile the competing federal statutory interests involved here is further revealed by the fact that, in offering this language as a solution, the United States doe not explain how to determine what legal rights asserted by an employee subject to the Railway Labor Act are sufficiently "independent" to justify doing violence to the strong Congressional policy of exclusive arbitration before the Adjustment Board. Clearly, not all rights asserted to be collateral to the collective bargaining agreement warrant bypass of the Railway Labor Act disputes resolution machinery. *Andrews* v. *Louisville & Nashville R.R.*, 406 U.S. 320; *Farmer* v. *United Bhd. of Carpenters & Joiners*, 430 U.S. 290.

tion, the decision below poses a dangerous threat to the integrity of the long-standing and highly successful disputes resolution machinery of the Railway Labor Act. It fully merits review by this Court.

Respectfully submitted,

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